IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3883 of 1990
with
SPECIAL CIVIL APPLICATION No 8957 of 1991
with
SPECIAL CIVIL APPLICATION No 5195 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

KANAIYALAL BABULAL RANA
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 3883 of 1990
MR DG CHAUHAN for Petitioner No. 1
MS DS PANDIT AGP for Respondent No. 1-2,4
MR HS MUNSHAW for Respondent No. 3
2. Special Civil Application No. 8957 of 1991
MR DG CHAUHAN for Petitioner No. 1
MR IM PANDYA AGP for Respondent No.1-2,4
MR HS MUNSHAW for Respondent No. 3
3. Special Civil Application No.5195 of 1997
MR ASIM PANDYA for MR VH PATEL for Petitioner
MR MB GANDHI for Respondent

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 24/07/2001

ORAL JUDGEMENT

1. All the three petitions being among the same parties and being interconnected, they are heard together at the request of the learned counsel and disposed by this common judgment.

2. The first petition, i.e. Special Civil Application No.3883 of 1990, is instituted by the petitioner-workman with a grievance that instead of regularising his service after eight years of continuous service under monthly appointment orders, his services were sought to be terminated with effect from 25.5.1990. According to the petition, the petitioner was originally appointed as a work-charge karkoon-cum-Gujarati typist in the office of the Superintending Engineer (Panchayat Irrigation Circle) on a clear vacant post and in the pay scale of Rs.260-400. After such continuous service upto 1.3.1984, the petitioner came to be appointed by the respondent No.3 as a work-charge clerk in the same pay scale on the appointment orders employing him for 29 days in a month. Again from 7.1.1985, the petitioner came to be appointed by the respondent No.2 as a daftry in the lower pay scale of Rs.200-250 in the same manner. Thereafter, again the respondent No.3 employed the petitioner with effect from 1.1.1986 to 29.8.1987 on similar 29 days appointments, but the petitioner was paid a fixed salary. From 1.9.1987, the petitioner was placed in the pay scale of 950-1500 albeit on orders employing him for 29 days in a month. Some of the appointment orders during this period specified that the expense of the wages of the petitioner was to be debited against scarcity relief grant. Such appointments continued upto 19.11.1988 with an artificial break of only one or two days between two appointment orders. Thereafter, the petitioner continued to be employed by the respondent No.3 on appointment orders for 90 days or 29 days but his wages were reduced to a pathetic pay of Rs.450/- and the same was increased from time to time upto Rs.616.20. The service of the petitioner came to be terminated with effect from 4.9.1992 even as this first petition was pending before the Court and a limited protection was operating in his favour in the sense that an order not to terminate the service of the petitioner except in accordance with law was operating. The petitioner approached the Labour Court after reference of his

industrial dispute and the Labour Court awarded reinstatement with full backwages and continuity of service. Pursuant to such award, the respondent-employer has, on the one hand, challenged the award of the Labour Court by filing Special Civil Application No.5195 of 1997 and, on the other hand, reinstated the petitioner in service on a part-time basis with effect from 22.9.1997. Thus, the petitioner is serving under the respondent No.3 on a part-time basis at a fixed salary after the chequered history of about 18 years of continuous service.

3. The second petition being Special Civil Application No.8957 of 1991 is also filed by the workman against the same respondents challenging the order dated 28.11.1991 by which the service of the petitioner was sought to be terminated. That petition was originally filed as a Civil Application in the first-mentioned Special Civil Application and thereafter permitted to be converted into a Special Civil Application. The respondent No.3 has, in defence, filed an affidavit of the Executive Engineer in Special Civil Application No.3883 of 1990 wherein it is, inter alia, stated that the petitioner was employed as a work-charge clerk-cum-typist from 1.1.1986 on scarcity relief work and he was continued in service in view of the pendency of the Special Civil Application No.3883 of 1990. It is admitted that the petitioner was reinstated after the aforesaid award of the Labour Court. However, it is also admitted that he is being paid salary on part-time basis @ Rs.1,350/- per month from 1.9.1998. It is averred that the petitioner is not a regularly selected employee under the provisions of the Gujarat Panchayats Act and the Rules framed thereunder and on that ground the prayer for regularisation is objected. It has to be noted that this affidavit professes to annexe Annexures-A, B and C which are supposed to be the statement showing details of the working periods, statement showing how the expenses of the wages of the petitioner were debited and the orders appointing the petitioner for 29 days at a time respectively. However, only the Annexure-A was really supplied at the fag end of the hearing.

4. The third petition being Special Civil Application No.5195 of 1997 filed by the employer, the Executive Engineer prays for quashing the award of the Labour Court ordering reinstatement with backwages as also the order of the Labour Court in Miscellaneous Civil Application No.30 of 1997 by which the application of the employer to set aside the ex part award was rejected. The award impugned in this petition records the fact that

after closure of the right to file written statement, the petitioner-employer had filed vakalatnama and written statement and thereafter abstained from participating in the proceedings in the Labour Court. Several opportunities were granted to the employer to cross-examine the workman but the same were not availed. Therefore, the Labour Court was constrained to make the ex parte award dated 25.9.1996. Even thereafter, instead of filing a proper Miscellaneous Civil Application for setting aside the ex parte award under Rule 26-A of the Gujarat Industrial Disputes (Gujarat) Rules, 1966, the employer had preferred to file an application under Rule 31 without proper signature therein and without filing any affidavit in support of such application. In such circumstances, the Labour Court rejected that application by its order dated 19.5.1997. The petitioner of that petition, i.e. the employer, has challenged the aforesaid orders mainly on merits of the award while only stating that the advocate of the petitioner could not remain present before the Labour Court when the ex parte award to reinstate the workman with full backwages was made and that, therefore, the award was illegal. It was also argued on behalf of the employer that the Labour Court could have treated the Miscellaneous Application of the petitioner as an application under Rule 26-A and could have entertained it as such. However, no such request appears to have been made before the Labour Court. In short, no ground is made out to interfere either with the impugned award or the order passed pursuant to the Miscellaneous Application. It has to be noted in this context that the employer did not avail of the opportunity to defend itself although 15 to 16 adjournments were granted by the Labour Court and even after passing of the ex parte award the petitioner did not care to file a proper application or pursue it with any diligence. While entertaining the petition, it is observed by this Court in the interim order dated 2.9.1997 that the respondent-workman was denied employment since 4.9.1992 and while holding the relief of reinstatement, continuity of service and backwages, the respondent was still without any job. In such circumstances, the relief of backwages was stayed on condition that the employer would issue orders with regard to reinstatement of the workman in terms of the award. In these facts and circumstances, Special Civil Application No.5195 of 1997 challenging the order of reinstatement with full back wages and continuity of service is required to be rejected and accordingly the same is rejected.

5. With the history and background of facts being as

noted above and the order of reinstatement made by the Labour Court being upheld and confirmed, the original petitioner has, in effect, completed continuous service of more than 18 years out of which, even deducting the services rendered under respondent No.2, the actual period of continuous service under the respondent No.3 is more than 14 years. It is an admitted fact that the initial appointment of the petitioner was against a permanent vacant post and in a pay scale as a typist-cum-clerk. Even thereafter, the respondent No.3 has issued consecutive orders of appointments appointing the petitioner for 29 days in a month either in pay scale or on fixed pay. The learned counsel for the respondent failed to explain the discrepancy in increase and reduction of wages of the petitioner. However, there is no dispute about the fact that the petitioner had served continuously and there were no complaints about his work or conduct. It is also pertinent to note that, according to the petitioner, 18 new employees have been employed to do the same work, that they are appointed on permanent basis and regular pay scale is accorded to them. As against that, the argument of the learned counsel for the respondent was only that the petitioner was not employed after following the regular recruitment procedure and that he was practically a back-door entrant.

6. The petitioner has based his claim on the premise that the successive issuance of about 108 appointment orders calculated to keep the petitioner as a temporary employee on the tenter-hooks was an unfair labour practice which effectively deprived the petitioner of the status and privilege of a permanent workman even as he performed the same duties over such a long period of time. It was also submitted that the petitioner was subjected to hostile discrimination in violation of Articles 14 and 16 of the Constitution insofar as equal pay and remuneration and benefits were denied to the petitioner for doing the same work as was done by the similarly appointed employees who were juniors to him. The learned counsel for the petitioner relied upon a recent judgment of the Supreme Court in GUJARAT AGRICULTURAL UNIVERSITY v. RATHOD LABHU BECHAR [AIR 2001 SC 706] and particularly pointed out the observations as under:

> "In fact, the Tribunal has held on the date of the award, most of the workmen had completed 10 years of their service. It is also well settled, if work is taken by the employer continuously from daily wage workers for a long number of years without considering their regularisation

> for its financial gains as against employees legitimate claim, has been held by this Court repeatedly as an unfair labour practice. In fact, taking work from daily wage worker or ad hoc appointee is always viewed to be only for a short period or as a stop gap arrangement, but we find new culture is growing to continue with it for a long time, either for financial gain or for controlling its workers more effectively with sword of damocles hanging over their heads or to continue with favoured one in the cases of ad hoc employee withstaling competent and legitimate claimants. Thus we have no hesitation to denounce this practice. If the work is of such a nature, which has to be taken continuously and in any case when this pattern become apparent, when they continue to work for year after year, only option to the employer is to regularise them."

A Division Bench judgement of this Court in RESERVE BANK OF INDIA v. C.D.CHAUHAN [1994 (1) G.L.H. 1] was also relied upon on behalf of the petitioner in support of the proposition that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. It is also observed in the said judgment that the State is a model employer and for that reason a person should not be kept in a temporary or ad hoc status for long. Where such an employee is continued for long, the Court presumes that there is a need and warrant for a regular post and accordingly it directs regularisation. The learned counsel also relied upon the celebrated judgment of the Supreme Court in STATE OF HARYANA v. PIARA SINGH [(1992) 4 SCC 118] wherein it is laid down that where a temporary or ad hoc appointment is continued for long, the Court presumes that there is need and warrant for a regular post and accordingly directs regularisation. But there is no rule of thumb in such matters. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It is further held by the Supreme Court that as far as the work-charged employees and casual labourers are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell- say two or three years- a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the authority concerned to examine

the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. Security of tenure is necessary for an employee to give his best to the job.

7. The learned counsel for the respondent submitted in reply that in view of the continuous service of the petitioner and in view of the irregular nature of his appointment without the recruitment rules being followed, at the most, the petitioner could be awarded the benefits admissible to daily wagers under the Resolution of the Government dated 17.10.1988. He further submitted that even under the scheme evolved by that Resolution, the petitioner would be entitled to the benefits of permanent employment after completion of ten years of service. It was, however, fairly conceded that in the facts of the present case, the petitioner was consistently employed as a work-charge karkoon or work-charge karkoon-cum-typist, whereas the aforesaid Resolution applies in the cases of daily wagers whose actual days of employment in a year was the decisive factor for application of that Resolution. The appointment and employment of the petitioner cannot be compared with the daily wagers whose employment is supposed to be intermittent and dependent upon availability of work. As seen earlier, the petitioner has consistently and continuously been employed by orders of the respondent and has been paid wages on monthly basis except during the period when the petitioner was discharged from service and his case was pending before the Labour Court. The other contention of the respondent that the petitioner was employed on scarcity relief work is not substantiated by the respondent's own documents. It is true that when the petitioner was granted the benefit of pay scale, the relevant appointment orders mentioned that the expenses on wages of the petitioner were to be debited against the scarcity relief grant. However, even as such appointments were continued, those words about apportioning the expenditure incurred on the wages of the petitioner were removed from the appointment orders. There is no other material indicating that the petitioner was actually employed on any scarcity relief work or was employed as a measure of scarcity relief.

8. In these facts and circumstances, it is clear that even as the petitioner was performing duties as that of a regularly selected and appointed clerk-cum-typist, he was denied the wages and benefits as also the security of tenure. Therefore, the petitioner is entitled to regularisation of his service after reasonable period as

also to the benefits of such regularisation in the form of pay scale and other benefits at par with the other regularly appointed employees. It would be improper and immoral for any employer to state in one breath that the employee employed for more than a decade was a backdoor entrant even as he continued to be employed by express orders of the same employer. In the facts of the case, the petitioner was actually placed in the pay scale of 950-1500 under the respondent No.3 since 1.9.1987 after service of about two years which was for all practical purpose continuous. Following the observations of the Supreme Court quoted hereinabove, the petitioner ought to have been made permanent and his service ought to have been regularised after completion of service of two to three years. It is seen that since 20.11.1988, the petitioner was reduced to a fixed pay of Rs.450/- per month which was increased to Rs.616.20 from 22.2.1989. Therefore, the service of the petitioner is required to be regularised and his employment in the pay scale of 950-1500 is required to be maintained since 20.11.1988. Accordingly, the first petition being Special Civil Application No.3883 of 1990 is required to be allowed. The petitioner is directed to be paid his salaries due under the same pay scale and according to the pay scales revised from time to time for the same post from 20.11.1988 onwards after deducting the amounts already paid to him. The petitioner shall also be entitled to all the benefits due to a permanent workman. The learned counsel for the petitioner, however, fairly conceded that during the period of pendency of the reference case before the Labour Court when the petitioner was unemployed, he would be agreeable to have the backwages reduced to 50 per cent. Accordingly, the arrears in respect of the period from 4.9.1992 to 22.9.1997 shall be reduced to half. The second petition being Special Civil Application No.8957 of 1991 admittedly does not survive.

9. Accordingly, the first Special Civil Application No.3883 of 1990 is partly allowed and Rule is made absolute in terms as above. The second Special Civil Application No.8957 of 1991 does not survive and stands disposed as having become infructuous. The Third Special Civil Application No.5195 of 1997 is rejected and Rule therein is discharged with no order as to costs in any of the matters.

10. In view of the petitions having remained pending for over a decade, it is expected that the respondent shall carry out the directions within a period of three months from today.

Sd/-

24.7.2001 [D.H.Waghela, J.]

(KMG Thilake)